

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,

Plaintiff,

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff-Intervenor,

v.

GREATER LAWRENCE SANITARY DISTRICT

Defendant.

CIVIL ACTION NO.

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Appendix A   Jointly issued EPA NPDES Permit No. MA0100447 and Massachusetts DEP Permit, dated and approved August 11, 2005.

Appendix B   April 2004 “Updated Conceptual Plan Development Report for the Greater Lawrence Sanitary District” prepared for GLSD by Wright-Pierce.

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CONSENT DECREE

WHEREAS, the Greater Lawrence Sanitary District ("GLSD" or "the District") discharges pollutants into navigable waters of the United States from its wastewater treatment plant ("WWTP") and Combined Sewer Overflow ("CSO") outfalls pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. MA0100447 (hereinafter "the Permit"). A copy of the Permit is attached as Appendix A;

WHEREAS, the plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), has filed a complaint simultaneously herewith, alleging that GLSD has violated the Permit and Section 301(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1311(a);

WHEREAS, the Commonwealth of Massachusetts ("Commonwealth"), on behalf of the Massachusetts Department of Environmental Protection ("MA DEP"), has filed an assented-to

motion to intervene as a plaintiff in the action brought by the United States and has filed a complaint that alleges that GLSD was, and is, in ongoing violation of Section 301 of the CWA, 33 U.S.C. § 1311, and further alleging that GLSD was, and is, in ongoing violation of the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26 et seq. (the "Massachusetts Act") and provisions of the Permit and State Permit No. M-186 issued by MA DEP under the Massachusetts Act (said Federal and State permits having been issued as a single permit);

WHEREAS, the Commonwealth has joined this action pursuant to Section 309(e) of the CWA, 33 U.S.C. § 1319(e), as an intervening plaintiff;

WHEREAS, entry of this Consent Decree by the Court will resolve all claims in the complaint of the United States and the complaint of the Commonwealth, referred to herein collectively as the "Complaints"; and

WHEREAS, the United States, the Commonwealth, and GLSD (collectively "Parties") agree, without admission of facts or law except as expressly stated herein, that settlement of this matter is in the public interest and that entry of this Consent Decree without further litigation is an appropriate resolution of the dispute, and the Parties consent to the entry of this Consent Decree;

NOW, THEREFORE, it is hereby ordered, adjudged, and decreed as follows:

#### I. STATEMENT OF CLAIM

1. The Complaints state claims upon which relief can be granted against GLSD pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and pursuant to Section 42 of the Massachusetts Act, M.G.L. c. 21, § 42.

## II. JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345, and 1355, and under the doctrine of pendent jurisdiction. This Court has personal jurisdiction over the Parties to this Consent Decree. Venue properly lies in this district pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), 28 U.S.C. § 1391(b) and (c), and 28 U.S.C. § 1395. GLSD waives all objections it might have raised to such jurisdiction or venue.

## III. APPLICABILITY

3. The provisions of this Consent Decree shall apply to, and be binding upon, GLSD and its officers, directors, agents, employees acting in their official capacities, its successors, and assigns. GLSD shall provide a copy of this Consent Decree to all contractors and consultants retained to perform any obligation required by this Consent Decree on behalf of GLSD, and shall require that contractors and consultants provide a copy of this Consent Decree to their subcontractors. Such parties shall be deemed agents for the purposes of this Consent Decree.

## IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in the CWA or in regulations promulgated under the CWA shall have the meaning ascribed to them in the CWA or in the regulations promulgated thereunder. Whenever the terms listed below are used in this Consent Decree, the following definitions shall apply:

a. The phrases "approval by EPA and MA DEP," and "approved by EPA and MA DEP" shall mean GLSD's receipt of one joint, written approval document from both, or a

written approval from each, EPA and MA DEP.

b. "Collection System" shall mean the wastewater collection, storage and transmission system owned or operated by GLSD which is tributary to the WWTP, including, but not limited to, all devices, minisystems, pump stations, force mains, gravity sewer lines, manholes, and appurtenances.

c. "Consent Decree" or "Decree" shall mean this decree and all appendices attached hereto. In the event of conflict between this decree and any appendix, this decree shall control.

d. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal or Commonwealth holiday, the period shall run until the close of business of the next working day.

e. "Place In Operation" means to achieve steady-state operation and to consistently operate in such a way as to accomplish the intended function, even though all construction close-out activities (such as completion of a punchlist and resolution of contract disputes or close-outs) may not yet be completed.

#### V. OBJECTIVES

5. It is the express purpose of the Parties in executing this Consent Decree to require GLSD to perform all measures necessary to achieve and maintain compliance with the CWA, the Massachusetts Act, its Permit, any federal NPDES permit and state surface water discharge permit that may be issued to GLSD in the future ("Future Permit"), and any applicable state and federal regulations.

6. Engineering designs and analyses required to be performed pursuant to this

Consent Decree shall be conducted using sound engineering practices, and, as applicable, consistent with (a) EPA's Handbook: Sewer System Infrastructure Analysis and Rehabilitation, EPA/625/6-91/030, Oct. 1991; (b) EPA's Handbook for Sewer System Evaluation and Rehabilitation, EPA 430/9-75-021, Dec. 1975; (c) the currently effective edition of "TR 16: Guides for the Design of Wastewater Treatment Works."

## VI. REMEDIAL MEASURES

7. GLSD shall construct CSO controls identified in the November 2002, Draft Long-Term CSO Control Plan and Environmental Impact Report (the "LTCP") prepared for GLSD by Camp Dresser McKee ("CDM"), and updated by the April 2004 "Updated Conceptual Plan Development Report for the Greater Lawrence Sanitary District" ("April 2004 Report") prepared for GLSD by Wright-Pierce (attached as Appendix B hereto). GLSD shall upgrade its WWTP to accommodate a peak wet weather flow of 135 million gallons per day ("mgd") ("Phase 1") and ensure that Phase 1 is designed so that the WWTP is capable of handling potential future flow up to 165 mgd. The Phase 1 upgrade shall be consistent with the "Recommended Improvement Plan" as described in Section 8 of the April 2004 Report, and include, inter alia: modifications to increase the capacity of the Riverside Pump Station; construction of new headworks facilities; construction of a secondary bypass pipe; construction of new disinfection and dechlorination facilities; and, installation of a new aeration system to increase secondary treatment capacity. In accordance with the LTCP and April 2004 Report, GLSD shall achieve the milestones set forth in the following table:

**TABLE I**

<b>Date</b>	<b>Scheduled CSO Projects</b>
Sept. 1, 2007	Submit Post-Construction Monitoring Plan ("PCMP")
Dec. 31, 2007	Substantially Complete Phase 1 Construction and Place In Operation Additional Capacity (135 mgd)
Dec. 31, 2008	Obtain Engineer's Performance Certificate
March 31, 2009	Submit Post-Construction Monitoring Report ("PCMR")
June 30, 2010	Update LTCP and Submit Revised LTCP to EPA and MA DEP

8. As described in Table I above, GLSD shall submit to EPA and MA DEP for approval a post-construction monitoring plan ("PCMP"). The PCMP shall include a monitoring protocol to assess how effective CSO controls constructed pursuant to this Consent Decree are in terms of capturing and treating stormwater and protecting receiving waters from CSO impacts. The PCMP shall include a schedule for: a) assessing the impacts of varying precipitation amounts on effluent characteristics and ambient water quality; and, b) submitting a post-construction monitoring report ("PCMR"), which shall be submitted no later than March 31, 2009. The PCMR shall: compare actual frequency of CSO discharges after substantial completion of Phase I construction to the frequency of CSO discharges predicted by the sewer system model used by GLSD in preparing the LTCP, using actual rainfall records as model input; identify the expected frequency of CSOs remaining in a typical year after full implementation of Phase I; characterize the impacts of the expected remaining CSOs in a typical year; and, identify a full range of alternatives for eliminating the environmental impacts from any remaining CSOs including consideration of coordination of CSO control planning with a water quality standards



("WQS") review of any receiving water into which GLSD discharges as currently set forth in Guidance: Coordinating CSO Long-Term Planning With Water Quality Standards Reviews, EPA-833-R-01-002, July 31, 2001, as may be amended in the future. The PCMR shall include GLSD's preferred alternative and a proposed schedule for implementing the preferred alternative for addressing the remaining CSOs.

9. EPA and MA DEP reserve the right to propose additional CSO mitigation projects to be incorporated into, and made enforceable under, Section VI of this Consent Decree if, after receipt of the PCMR that is the subject of Paragraphs 7 and 8 of this Consent Decree, EPA and/or MA DEP determine(s) that additional controls are necessary to achieve compliance with the CWA or the Massachusetts Act, including state water quality standards promulgated pursuant to the Massachusetts Act, and provide(s) written notification of this determination ("Additional Controls Determination") to GLSD. GLSD agrees to submit, within 90 days of receipt of the Additional Controls Determination, a plan or plans for completion of a subsequent phase of CSO control and abatement projects and an implementation schedule that will address any outstanding CWA or Massachusetts Act violations. This 90 day deadline may be extended if necessary upon approval of EPA and MA DEP. If such schedule for additional CSO controls is necessary in order to attain compliance with the CWA or the Massachusetts Act, including WQS, the additional CSO controls shall be constructed as expeditiously as practicable. GLSD agrees that, following approval of EPA and MA DEP, these plans and implementation schedule shall be submitted to the Court for incorporation into this Consent Decree and shall become fully enforceable under this Decree upon approval of the Court. The Additional Controls Determination is not subject to the provisions of Section XIII (Dispute Resolution) of this

Consent Decree. GLSD shall submit a revised LTCP to EPA and MA DEP by June 30, 2010, and shall fully implement the LTCP as approved.

#### VII. INTERIM PERMIT CONDITIONS

10. Except as set forth below, the requirements of GLSD's NPDES permit with respect to the flow and mass discharge limitations shall not be enforced through this Consent Decree. In addition to the requirements of Paragraph 8, the PCMP shall include a plan for monitoring wastewater flows and calculating mass discharges of biochemical oxygen demand ("BOD") and total suspended solids ("TSS") from the WWTP commencing when GLSD places in operation the Phase I upgrade referenced in Paragraph 7. GLSD shall implement the plan when it places in operation the Phase I upgrade. The PCMR shall include the results of such monitoring and calculations. If the monitoring and calculations indicate to the satisfaction of EPA and MA DEP that GLSD can meet the flow and mass discharge limits of its then current NPDES permit, then upon written notification by EPA and MA DEP, GLSD shall comply with those flow and mass discharge limits. If the results of such monitoring indicate that GLSD cannot reasonably meet the flow and mass discharge limits of its then-current NPDES permit, GLSD shall, within 90 days of submission of the PCMR, submit to EPA and MA DEP for approval proposed alternative interim flow and mass discharge limits. Upon written approval by EPA and MA DEP, such alternative flow and mass discharge limits shall be enforceable as interim discharge limits under this Consent Decree.

#### VIII. REPORTS ON COMPLIANCE

11. Following Entry of the Consent Decree, and until termination of the Consent Decree, GLSD shall report to EPA and MA DEP on its compliance with Section VI (Remedial

Measures) every three months. The reports shall be submitted to EPA and MA DEP by the 30th day of the month following each quarter (January, April, July, October). Each progress report submitted under this Paragraph shall:

- a. Describe activities undertaken during the reporting period directed at achieving compliance with this Consent Decree;
- b. Describe the expected activities to be taken during the next reporting period in order to achieve compliance with this Consent Decree; and
- c. Identify any noncompliance with this Consent Decree's requirements, including the schedule set forth in Table I of this Consent Decree. If noncompliance is reported, notification shall include the following information:
  - (i) A description of the noncompliance;
  - (ii) A description of any actions taken or proposed by GLSD to comply with any missed schedule requirements;
  - (iii) A description of any factors not anticipated at the time of this agreement that tend to explain or mitigate the noncompliance; and,
  - (iv) An approximate date by which GLSD will perform the required action.

The reporting requirements set forth in this Section do not relieve GLSD of its obligation to submit any other reports or information as required by state, federal or local law.

#### IX. CIVIL PENALTY

12. In full settlement, satisfaction, and discharge of the United States' and the Commonwealth of Massachusetts' civil penalty claims for the violations alleged in their

Complaints through the date of lodging of this Consent Decree, GLSD shall pay a civil penalty in the total amount of **\$254,000**, one half (\$127,000) of which shall be payable to the United States and the other half (\$127,000) shall be payable to the Commonwealth of Massachusetts, as set forth in Subparagraphs 12.b and 12.c below, within 30 days after receiving notice of entry of this Consent Decree.

a. In the event that full payment is not made within 30 days after receiving notice of entry of this Consent Decree, GLSD shall pay interest ("Interest") on the balance due, at the rate provided in 28 U.S.C. § 1961(a), that is, a rate equal to the coupon issue yield equivalent (as determined by the Secretary of Treasury) of the average accepted auction price for the last auction of 52-week U.S. Treasury bills settled prior to the date of lodging of this Consent Decree. Interest shall be computed daily and compounded annually.

b. GLSD shall pay a civil penalty in satisfaction of the United States' claims in the amount of **\$127,000**. GLSD shall make payment by electronic funds transfer in accordance with written instructions to be provided by the United States Attorney's Office, Financial Litigation Unit, Boston, Massachusetts. The costs of such electronic funds transfer shall be the responsibility of GLSD. GLSD shall send a copy of the electronic funds transfer authorization form, the electronic funds transfer transaction record, and the transmittal letter to EPA and the United States Department of Justice as specified in Section XV (Form of Notice). Payment of the civil penalty shall be made within 30 days after GLSD receives notice of entry of the Consent Decree. If GLSD fails to pay the civil penalty within 30 days after receiving notice of entry of the Consent Decree, GLSD shall pay Interest on the late payment. Nothing in this Paragraph shall be construed to limit the United States or the Commonwealth from seeking any

remedy otherwise provided by law for failure of GLSD to pay any civil penalties.

c. GLSD shall pay a civil penalty in satisfaction of the Commonwealth of Massachusetts' claims in the amount of **\$127,000**. Interest shall accrue at the rate provided for in 28 U.S.C. § 1961. GLSD shall make payment by electronic funds transfer to the Office of the Massachusetts Attorney General, in accordance with written instructions to be provided by the Office of the Massachusetts Attorney General. The costs of such electronic funds transfer shall be the responsibility of GLSD. GLSD shall send a copy of the electronic funds transfer authorization form, the electronic funds transfer transaction record, and the transmittal letter to MA DEP as specified in Section XV (Form of Notice) and to the Office of the Massachusetts Attorney General. Payment of the civil penalty plus any interest shall be made within 30 days after GLSD receives notice of entry of the Consent Decree.

#### **X. STIPULATED PENALTIES**

GLSD shall pay stipulated penalties to the United States and the Commonwealth for violations of this Consent Decree, as set forth below:

13. **Failure to Complete Remedial Measures**

For every day that GLSD is late in meeting the requirements of Section VI (Remedial Measures), including but not limited to submitting an approvable plan or report, or fails to implement remedial requirements in a plan or report approved by EPA and/or MA DEP, as appropriate, GLSD shall pay stipulated penalties as follows:

**Period of Noncompliance**

**Penalty Per Violation Per Day**

1-10 days	\$1,000
11-20 days	\$2,500
over 21 days	\$5,000

14. **Delay in Payment of Penalty**

GLSD shall pay to the United States and/or the Commonwealth, as applicable, a stipulated penalty of \$2,000 for each day that the GLSD is late in paying the civil penalty required under Section IX (Civil Penalty).

15. **All Other Violations**

GLSD shall pay a stipulated penalty of \$1,000 per violation per day for any violation of the Consent Decree that is not addressed in this Section.

16. Stipulated penalties shall automatically begin to accrue on the first day GLSD fails either to meet any of the schedules of performance required by this Consent Decree or to satisfy any obligation or requirement of this Consent Decree and shall continue to accrue through the final day of the correction of the noncompliance or completion of the required activity.

17. Stipulated penalty payments as specified in this Section shall be made by delivering such payments to the United States and the Commonwealth, in equal amounts, in accordance with the instructions set forth in this Paragraph. Each stipulated penalty payment shall be accompanied by a letter describing the basis for each penalty.

a. Stipulated penalty payments to the United States shall be paid within 30 days of EPA's written demand for payment of stipulated penalties by certified check payable to "Treasurer, United States of America" and shall be delivered by certified mail to the Office of the United States Attorney for the District of Massachusetts, with notice to EPA and the Department of Justice, at the addresses listed in Section XV (Form Of Notice).

b. Stipulated penalty payments to the Commonwealth shall be made within 30 days of the Commonwealth's written demand for payment of stipulated penalties by certified

or cashier's check payable to the "Commonwealth of Massachusetts" and shall be delivered to the Office of the Attorney General, as described in Section XV (Form Of Notice).

18. In the event that a stipulated penalty payment is not made on time to the United States or the Commonwealth, such penalty (or portion thereof) shall be subject to interest at the statutory judgment rate set forth at 28 U.S.C. § 1961, for each day of late payment or non-payment. Nothing in this Paragraph shall be construed to limit the United States or the Commonwealth from seeking any remedy otherwise provided by law for failure of GLSD to pay any stipulated penalties.

19. The stipulated penalties set forth above shall be in addition to any other remedies, sanctions, or penalties which may be available by reason of GLSD's failure to comply with the requirements of this Consent Decree. All Parties to this Consent Decree expressly reserve any and all legal and equitable remedies, including contempt sanctions, which may be available to enforce the provisions of this Consent Decree.

#### XI. FORCE MAJEURE

20. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of GLSD, including its contractors and subcontractors, that delays or prevents the timely performance of any obligation under this Consent Decree notwithstanding GLSD's best efforts to avoid the delay. Stipulated penalties shall not be due for the number of days of noncompliance caused by a Force Majeure event as defined in this Section, provided that GLSD complies with the terms of this Section. Examples of events that are not Force Majeure events include, but are not limited to, normal inclement weather, unanticipated or increased costs or expenses of work, the financial difficulty of GLSD to perform such work, acts

or omissions attributable to GLSD's contractors or representatives, and the failure of GLSD or GLSD's contractors or representatives to make complete and timely application for any required approval or permit. "Best efforts" include using best efforts to anticipate any potential Force Majeure event and to address the effects of any such event: (a) as it is occurring; and, (b) after it has occurred, such that the delay is minimized to the greatest extent possible.

21. If any event occurs which may delay or prevent the performance of any obligation under this Consent Decree, whether or not caused by a Force Majeure event, GLSD shall notify EPA and MA DEP within 72 hours after GLSD first knew, or should have known, that the event might cause a delay. Within five working days thereafter, GLSD shall provide to EPA and MA DEP, at the addresses specified in Section XV (Form Of Notice), a written explanation of the cause(s) of any actual or expected delay or noncompliance, the anticipated duration of any delay, the measure(s) taken and to be taken by GLSD to prevent or minimize the delay, a proposed schedule for the implementation of such measures, and a statement as to whether, in the opinion of GLSD, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Notwithstanding the foregoing, GLSD shall notify EPA and MA DEP orally within 24 hours of becoming aware of any event which presents an imminent threat to the public health or welfare or the environment and provide written notice to EPA and MA DEP within 72 hours. Failure to give timely and complete notice in accordance with this Paragraph shall constitute a waiver of any claim of Force Majeure with respect to the event in question.

22. If EPA and MA DEP agree that a delay or anticipated delay is attributable to Force Majeure, the time for performance of the obligations under this Consent Decree that are affected by the Force Majeure event shall be extended by mutual, written agreement of the



Parties for a period of time, not to exceed the actual time lost due to the unavoidable delay, as may be necessary to allow performance of such obligations to the extent the delay was caused by a Force Majeure event.

23. If the Parties are unable to agree as to whether a delay or anticipated delay is attributable to Force Majeure, or on the number of days of noncompliance caused by such event, GLSD may initiate the dispute resolution process set forth in Section XIII (Dispute Resolution). If GLSD does not initiate the dispute resolution process set forth in Section XIII within 15 days of receiving written notice that EPA and MA DEP disagree as to whether a delay or anticipated delay is attributable to Force Majeure, or disagree as to the number of days of noncompliance that are attributable to such circumstances, then GLSD shall be deemed to have waived any Force Majeure claims or any rights to initiate Dispute Resolution with regard to such claims.

24. Delay in performance of any obligation under this Consent Decree shall not automatically justify or excuse delay in complying with any subsequent obligation or requirement of this Consent Decree.

25. Failure of GLSD to obtain any state or federal grants or loans shall not be considered a Force Majeure event under this Consent Decree.

## XII. APPROVAL OF DELIVERABLES

26. After review of any plan, report, or other item that is required to be submitted pursuant to this Consent Decree, EPA and MA DEP, shall in writing: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; or (c) disapprove, in whole or in part, the submission.

27. Upon approval pursuant to Paragraph 26(a), GLSD shall take all actions required

by the plan, report, or other item, as approved by EPA and MA DEP. In the event of approval in part pursuant to Paragraph 26(a) or approval upon specified conditions pursuant to Paragraph 26(b), upon written direction of EPA and MA DEP, GLSD shall take all actions required by the approved plan, report, or other item, that EPA and MA DEP determine are technically severable from any disapproved portions, subject to GLSD's right to dispute only the specified conditions or the non-approved portions pursuant to Section XIII (Dispute Resolution).

28. Upon receipt of a written notice of approval in part pursuant to Paragraph 26(a) or of disapproval pursuant to Paragraph 26(c), GLSD shall, within 45 days or such other time as the Parties agree in writing, correct deficiencies and resubmit the plan, report, or other item, or portion thereof, for approval. Upon receipt of a written notice of approval upon specified conditions pursuant to Paragraph 26(b) GLSD shall, within 45 days or such other time as the Parties agree in writing, provide written notice of acceptance of such specified conditions, or indicate that it intends to dispute such specified conditions pursuant to Section XIII (Dispute Resolution). Any stipulated penalties applicable to the submission, shall accrue during the 45-day period or specified period but shall not be payable unless the resubmission is untimely and/or disapproved as provided in Paragraph 26(c). The 45-day period described in this Paragraph does not apply to GLSD's response to an Additional Controls Determination pursuant to Paragraph 9.

29. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA and/or MA DEP, EPA and/or MA DEP may again require GLSD to correct the deficiencies, in accordance with the preceding Paragraphs 26-28.

30. If upon resubmission, a plan, report, or item, or portion thereof, is disapproved by

EPA and MA DEP, GLSD shall be deemed to have failed to submit such plan, report, or item, or portion thereof, unless GLSD invokes the dispute resolution procedures set forth in Section XIII (Dispute Resolution) within 15 days of receipt of EPA's and MA DEP's written position. If EPA's and MA DEP's disapproval is upheld after dispute resolution, stipulated penalties shall accrue and be payable for such violation from the date of the disapproval of the original submission.

31. All plans, reports, and other items required to be submitted to EPA and MA DEP under this Consent Decree shall, upon approval by EPA and MA DEP, be enforceable under this Consent Decree. In the event EPA and MA DEP approve a portion of a plan, report, or other item required to be submitted under this Consent Decree, the approved portion shall be enforceable under this Consent Decree.

32. In the event a dispute arises among the Parties regarding EPA's and MA DEP's approval upon specified conditions or disapproval in part or in whole of any plans, reports, and other items required to be submitted to EPA and MA DEP under this Consent Decree, the position of EPA and MA DEP shall govern unless GLSD invokes the dispute resolution process set forth in Section XIII (Dispute Resolution) within 15 days of receipt of EPA's and MA DEP's written position.

### XIII. DISPUTE RESOLUTION

33. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under, or with respect to, this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States or the Commonwealth to enforce obligations that

GLSD has not disputed in accordance with this Section, or as provided in Paragraph 9.

34. If GLSD objects to disapproval or conditions in an approval of any item required to be submitted to EPA and MA DEP under this Consent Decree, or if the Parties are unable to agree as to whether a delay or anticipated delay is attributable to Force Majeure or the number of days of noncompliance caused by such event, or on the amount of Stipulated Penalties due, GLSD may initiate informal, good faith negotiations among the Parties to the dispute for a period of up to 30 days from the time GLSD gives notice of the existence of the dispute, provided that GLSD gives EPA and MA DEP written notice of the existence of the dispute within 15 days after receipt of a notice of disapproval or conditional approval, or a Force Majeure or Stipulated Penalty determination by EPA and/or MA DEP, as appropriate. The period for negotiations may be extended by written agreement of the Parties.

35. In the event that the Parties cannot resolve any such dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA and MA DEP shall be considered binding unless, within 21 days of the end of the negotiation period, GLSD shall file a petition with this Court setting forth the matter in dispute, the efforts of the Parties to resolve it, and the relief requested. EPA and/or MA DEP, as appropriate, shall then have 30 days to respond to any such petition.

36. In proceedings on any dispute regarding a delay in performance as set forth in this Section, GLSD shall have the burden of proving that: (1) the delay or noncompliance is, or was, caused by a Force Majeure event, and (2) the amount of additional time requested is necessary to compensate for that event. In no event shall the time for performance be extended for a period longer than the actual delay resulting from the Force Majeure event.

37. Notwithstanding the previous Paragraph, in all disputes under this Section, GLSD shall have the burden of proving that the position of the United States and the Commonwealth is arbitrary and capricious, an abuse of discretion, or otherwise contrary to law. EPA or MA DEP shall maintain an administrative record of the dispute, which shall contain all statements of the Parties, including supporting documentation, submitted pursuant to this Section.

#### XIV. RIGHT OF ENTRY

38. EPA and MA DEP and their contractors, consultants, and attorneys shall have authority to enter any property and/or facility covered by this Consent Decree at any time, upon proper identification, for the purposes of monitoring the progress of activity required by this Consent Decree, verifying any data or information submitted to EPA and MA DEP under this Consent Decree, and assessing GLSD's compliance with this Consent Decree. This requirement is in addition to, and does not limit, the authority of EPA or MA DEP pursuant to the CWA, the Massachusetts Act, or any other provision of state or federal law.

#### XV. FORM OF NOTICE

39. Submissions required by this Consent Decree shall be made in writing by certified mail with return receipt, or by any reliable commercial delivery service that provides written verification of delivery, to the following respective addressees, unless written notice is given that another individual has been designated to receive the submissions. Any submission required by this Consent Decree must be received by EPA and MA DEP, as appropriate, upon the date due stated in the Consent Decree.

As to the Department of Justice

Bruce Gelber, Chief  
Environmental Enforcement Section,  
Environment & Natural Resources Division  
United States Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044

As to the United States Attorney

Anita Johnson  
Assistant United States Attorney  
John Joseph Moakley U.S. Courthouse  
1 Courthouse Way, Suite 9200  
Boston, MA 02210

As to EPA

George Harding  
Environmental Engineer  
U.S. Environmental Protection Agency  
One Congress Street, Suite 1100  
Mail Code: SEW  
Boston, MA 02114-2023

Jeffrey Kopf  
Enforcement Counsel  
U.S. Environmental Protection Agency  
One Congress Street, Suite 1100  
Mail Code: SEL  
Boston, MA 02114-2023

Reports and plans required to be submitted by GLSD to EPA shall be submitted to George Harding, with a copy of the transmittal letter only to Jeffrey Kopf. GLSD shall provide complete copies to both George Harding and Jeffrey Kopf of all other submissions required to be made by GLSD to EPA pursuant to this Consent Decree.

As to MA DEP

Lisa Dallaire  
Massachusetts Department of Environmental Protection  
Northeast Regional Office  
205B Lowell Street  
Wilmington, MA 01887

Richard Lehan  
Massachusetts Department of Environmental Protection  
Office of General Counsel  
3<sup>rd</sup> Floor  
One Winter Street  
Boston, MA 02108

Reports and plans required to be submitted by GLSD to MA DEP shall be submitted to Lisa Dallaire, with a copy of the transmittal letter only to Richard Lehan. GLSD shall provide complete copies to both Lisa Dallaire and Richard Lehan of all other submissions required to be made by GLSD to MA DEP pursuant to this Consent Decree.

As to the Massachusetts Attorney General's Office

Matthew Ireland  
Assistant Attorney General  
Environmental Protection Division  
Office of the Attorney General  
One Ashburton Place, 18th Floor  
Boston, MA 02108

As to GLSD

Richard Hogan  
Executive Director  
Greater Lawrence Sanitary District  
240 Charles Street  
North Andover, MA 01845

with a copy to

William H. DiAdamo  
DiAdamo Law Office LLP  
40 Appleton Way  
Lawrence, MA 01840

40. All written notices, reports or any other submissions required by this Consent

Decree shall contain the following certification by a duly authorized representative of GLSD:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

#### XVI. EFFECT OF SETTLEMENT

41. This Consent Decree is neither a permit nor a modification of an existing permit under any federal, state, or local law and in no way relieves GLSD of its responsibilities to comply with all applicable federal, state, and local laws and regulations, nor shall it be construed to constitute approval by EPA and/or MA DEP of any equipment or technology installed by GLSD under the terms of this Consent Decree.

#### XVII. RESERVATION OF CLAIMS AND DEFENSES

42. This Consent Decree does not limit any rights or remedies available to the United States or the Commonwealth of Massachusetts for any violation by GLSD of the CWA, the Massachusetts Act, and associated regulations or permit conditions other than for the civil violations, through the date of lodging, specifically alleged in the Complaints. This Consent



Decree does not limit any rights or remedies available to the United States or the Commonwealth of Massachusetts for any criminal violations. This Consent Decree does not limit the standing of any person under Section 505 of the CWA to sue for any violations of the CWA not addressed by this Consent Decree. The United States and the Commonwealth of Massachusetts expressly reserve all rights and remedies, legal and equitable, available to each of them for all violations of the CWA, the Massachusetts Act, or other applicable law where such violations are not alleged in their respective Complaints, and reserve all rights and remedies, legal and equitable, available to enforce the provisions of this Consent Decree. Nothing herein shall be construed to limit the power of the United States or the Commonwealth of Massachusetts, consistent with their respective authorities, to undertake any action against any person, in response to conditions which may present an imminent and substantial endangerment to the public's health or welfare, or the environment. Nothing herein shall be construed as preventing or limiting GLSD from asserting any valid claim or defense it has or may have to any action referred to in this Section. In addition, GLSD reserves all legal rights to seek modification of the water quality designation for any water bodies into which it discharges, including but not limited to seeking modification or removal of a use, designation of a partial use, or a variance to authorize discharge under Massachusetts or Federal law, rule or regulation.

43. This Consent Decree does not resolve any claims for contingent liability under Section 309(e) of the Clean Water Act, 33 U.S.C. § 1319(e). The United States specifically reserves any such claims against the Commonwealth, and the Commonwealth specifically reserves all defenses to any such claims.

#### XVIII. COSTS

44. Each party shall bear its own costs and attorneys' fees in this action, except that GLSD shall be responsible for all reasonable expenses incurred by the United States and the Commonwealth in collecting any outstanding penalties due under Sections IX (Civil Penalty) and X (Stipulated Penalties) of this Consent Decree and in enforcing the requirements of this Consent Decree. However, should GLSD prevail before a court in any dispute resolution brought pursuant to Section XIII (Dispute Resolution), it shall not be responsible for any costs or attorneys' fees incurred by the United States or the Commonwealth related to that dispute.

#### XIX. RETENTION OF JURISDICTION

45. The Court shall retain jurisdiction to modify and enforce the terms and conditions of this Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Consent Decree and to assess any stipulated penalties that may have accrued during the term of the Consent Decree.

#### XX. MODIFICATION

46. Any material modification to the terms of this Consent Decree shall be by written agreement of the Parties and approval of the Court, provided, however, that, without otherwise altering the obligations of the Consent Decree: (a) the Parties may by written agreement modify the schedules specified in this Consent Decree; and, (b) EPA and MA DEP may approve modifications of submissions to EPA and MA DEP, subject to the rights of GLSD in Section XIII (Dispute Resolution). Such modifications shall become effective upon agreement of the Parties or approval by EPA and MA DEP, as appropriate.

47. EPA and/or MA DEP may, prior to termination of this Consent Decree, propose that additional CSO mitigation projects be incorporated into Section VI (Remedial Measures) of this Consent Decree if, after receipt of the PCMR under Paragraph 9 of this Consent Decree, EPA and/or MA DEP determine that additional controls are necessary to achieve compliance with the CWA or the Massachusetts Act, including WQS. Upon motion by EPA and/or MA DEP, the Court may incorporate a schedule for additional CSO controls into this Consent Decree over the objection of GLSD.

#### XXI. FUNDING

48. Compliance with the terms of this Consent Decree by GLSD is not conditioned on the receipt of any federal or state grant funds or loans. In addition, compliance is not excused by the lack of any federal or state grant funds or loans.

#### XXII. SEVERABILITY PROVISION

49. The provisions of this Consent Decree shall be severable, and should any provisions be declared by a court of competent jurisdiction to be unenforceable, the remaining provisions shall remain in full force and effect.

#### XXIII. TERMINATION

50. The Court shall terminate this Consent Decree upon joint motion of the Parties after GLSD has paid any outstanding penalties, has completed all remedial measures (including post-construction monitoring and, if necessary, any projects proposed pursuant to Paragraph 9) required under Section VI (Remedial Measures) of this Consent Decree, and has demonstrated compliance with its then current joint Federal and State NPDES permit to the satisfaction of EPA and MA DEP for one year.

#### XXIV. FINAL JUDGMENT

51. Entry of this Consent Decree constitutes Final Judgment under Rule 54 of the Federal Rules of Civil Procedure.

#### XXV. WAIVER OF SERVICE OF SUMMONS AND COMPLAINT

52. GLSD hereby acknowledges receipt of the Complaints and waives service of the summonses pursuant to Rule 4 of the Federal Rules of Civil Procedure.

#### XXVI. PUBLIC COMMENT

53. GLSD consents to the entry of this Consent Decree without further notice. Final approval of this Consent Decree is subject to the public notice requirements of 28 C.F.R. § 50.7. After reviewing the public comments, if any, the United States shall advise the Court by motion whether it supports entry of the Consent Decree.

XXVII. APPENDICES

54. The following appendices are attached to and incorporated into this Consent

Decree:

“Appendix A” is the jointly issued EPA NPDES Permit No. MA0100447 and

Massachusetts DEP Permit, dated and approved August 11, 2005.

“Appendix B” is the April 2004 “Updated Conceptual Plan Development Report for the Greater Lawrence Sanitary District” prepared for GLSD by Wright-Pierce.

Judgment is hereby entered in accordance with the foregoing Consent Decree this \_\_\_\_\_

day of \_\_\_\_\_ 2006 .

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

The following parties hereby consent to the entry of this Consent Decree in the matter of *United States of America and Commonwealth of Massachusetts v. Greater Lawrence Sanitary District*.

For Plaintiff UNITED STATES OF AMERICA

\_\_\_\_\_  
Sue Ellen Wooldridge  
Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044

\_\_\_\_\_  
Date

MICHAEL J. SULLIVAN  
United States Attorney

By: \_\_\_\_\_  
Anita Johnson  
Assistant United States Attorney  
District of Massachusetts

October 12, 2006  
Date

For UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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Walker B. Smith, Director  
Office of Civil Enforcement  
Office of Enforcement and  
Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

9/22/06  
Date

For UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

SEPT 25, 2006

Date

\_\_\_\_\_  
Stephen S. Perkins, Director  
Office of Environmental Stewardship  
United States Environmental Protection Agency, Region I  
One Congress Street  
Boston, MA 02114



For Plaintiff COMMONWEALTH OF MASSACHUSETTS

THOMAS F. REILLY  
ATTORNEY GENERAL

\_\_\_\_\_  
Matthew Ireland  
Assistant Attorney General  
Environmental Protection Division  
Office of the Attorney General  
One Ashburton Place, 18th Floor  
Boston, MA 02108

10/11/06  
\_\_\_\_\_  
Date

For Defendant GREATER LAWRENCE SANITARY DISTRICT

Thomas ~~McC~~ Connors, Chair of the Board,  
Greater Lawrence Sanitary District

9-27-06  
Date

Greater Lawrence Sanitary District  
Consent Decree

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